



California Fair Political Practices Commission

July 7, 1988

Honorable Charles D. B. Curry
City Council
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044

Re: Your Request for Advice
Our File No. I-88-207

Dear Mr. Curry:

This is in response to your letter requesting advice regarding your responsibilities as a member of the Open Space Task Force and the Advisory Committee for the Golden Gate National Recreation Area under the conflict-of-interest provisions of the Political Reform Act (the "Act").^{1/} Because your request is more of a general inquiry than a request for advice as to a specific action pending before you, we treat your request as one for informal assistance.^{2/}

QUESTION

Can you participate in decisions regarding the preservation or use of the Mori Point open space area, in light of your real property interests nearby?

CONCLUSION

You are prohibited from participating in the decisions of the Open Space Task Force and the Golden Gate National Recreation Area regarding Mori Point if such decisions would have a material financial effect on your real property interest. If there are some decisions which involve areas of

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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land in Mori Point which are too distant from your real property to have a reasonably foreseeable material financial effect, you may participate in those decisions.

FACTS

You are a member of the Pacifica City Council. You are also the city council representative to the Open Space Task Force which has been established by the city council to inventory open space lands in the City of Pacifica and to identify techniques to conserve and preserve these lands. One of the forty open space areas being studied by the task force is Mori Point. The task force will be making recommendations to the planning commission and the city council.

Among the possible recommendations of the task force are suggested limitations on development, identification of areas for open space, and suggestions for acquisition by public agencies. These recommendations are advisory only. The task force recommendations are to serve as a policy study to hopefully guide the city's decisions in the future with respect to the development of these lands.

You are also the city council's liaison to U. S. Congressman Tom Lantos' Advisory Committee on the Golden Gate National Recreation Area (GGNRA). As such you are working to expand the GGNRA boundaries in order that the National Park Service can acquire additional parcels in the City of Pacifica, thus ensuring their preservation as open space. One of these parcels could be Mori Point.

Among the possible activities of the advisory committee are lobbying public officials to expand the GGNRA, contacting private foundations to assist the GGNRA in acquiring Mori Point, and participating in discussions with the city concerning the acquisition of Mori Point.

Your residence is located in the Mori Point area. Your property borders on a parcel of land which has been designated open space by the City of Pacifica. Approximately 400 feet from your home is 105 acres of undeveloped land which has not been specifically designated open space.

ANALYSIS

As a member of the Pacifica City Council you are a public official. (Section 82048.) Section 87100 prohibits any public official from making, participating in, or attempting to use his official position to influence any governmental decision in which he knows, or has reason to know he has a financial

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interest. Regulation 18700.1 clarifies under what circumstances a public official is attempting to use his official position to influence a decision:

(a) With regard to a governmental decision which is within or before an official's agency or an agency appointed by or subject to the budgetary control of his or her agency, the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official contacts, or appears before, or otherwise attempts to influence, any member, officer, employee or consultant of the agency. Attempts to influence include, but are not limited to, appearances or contacts by the official on behalf of a business entity, client, or customer.

* * *

(c) With regard to a governmental decision which is within or before an agency not covered by subsection (a), the official is attempting to use his or her official position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as the representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationery.

Regulation 18700.1(a) and (c).

The Open Space Task Force was created by the city council, and all its participants are appointed by the city council. You are a city council representative to the task force. The GGNRA committee does not operate under the authority of the city council. Still, Regulation 18700.1 provides that you are using your position to influence a governmental decision when you participate in the deliberations and recommendations of either body as the official representative of the city council. (See Advice Letters to Shade, No. A-85-066, and Furth, No. I-87-079, copies enclosed.) Accordingly, you are prohibited from participating in any decisions of the task force or advisory committee in which you have a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public

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generally, on the official or a member of his immediate family, or on:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

In previous correspondence with the Commission on a similar issue, you indicated that your residence has a value of between \$200,000 and \$250,000. You must, therefore, disqualify yourself from decisions which will foreseeably have a material financial effect on your home. (Section 87103(b).)

The standard for determining whether a governmental decision will have a material effect on real property is found in Regulation 18702(b)(2)(B). A decision is material if it will increase or decrease:

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or

2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

Regulation 18702(b)(2)(B).

Thus, a material financial effect on your property would be an increase or decrease of \$1,250 or more in the fair market value of your residence.

The materials you provided with your previous correspondence indicate that Mori Point includes a 105-acre area of open space. We advised at that time, that since your residence was relatively close (approximately 400 feet) to a proposed development of exclusive homes in the open space portion of Mori Point, that it was reasonably foreseeable that your real property interest would be materially affected by decisions regarding the development proposal. (Curry Advice Letter, No. A-88-158.)

The identical analysis holds true under the circumstances involved here. The effect of a decision is reasonably foreseeable if there is a substantial likelihood that it will

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occur. Certainty is not required; however, if the effect is a mere possibility it is not reasonably foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198.) The decisions of the task force and advisory committee are intended to have a direct impact on future development of Mori Point. Thus, it is reasonably foreseeable that these decisions will affect the value of nearby real properties.

Since Mori Point is such a vast area of land, however, it is not clear that your real property will be materially affected by each of the decisions of the task force or the committee regarding use or preservation of the area. In determining whether a decision will have a material effect on real property, the Commission has consistently advised that the proximity of the public official's interest to the property which is the subject of the governmental decision is a critical element. (See Advice Letters to Lyders, No. A-82-158, Mering, No. A-84-325, and Scudder, No. A-88-181, copies enclosed.)

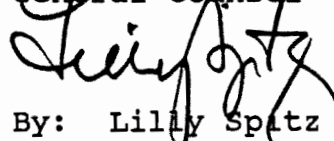
Unless the decisions regarding the potential use of open space land within Mori Point must, of necessity, involve the entire 105 acres of land, it appears that one or more decisions could involve property which may be too remote to have a material financial effect on your real property interests. Others, as in the case of the exclusive residential development within 400 feet of your home, could foreseeably have a material financial effect on your property.

We have insufficient information to be able to provide specific advice as to this question. If, at some future date, you have additional information regarding individual proposals within the Mori Point area, we would be happy to provide a more detailed analysis.

I hope this response provides some guidance to you in determining your responsibilities under the Act. If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh

Enclosures



Scenic Pacifica

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June 1, 1988

Diane M. Griffiths
General Counsel
Fair Political Practices Commission
Legal Division
P. O. Box 807
Sacramento CA 95814

Re: Advice Letter No. A-88-158

Dear Ms. Griffiths:

Thank you for your Advice Letter of May 10, 1988 concerning a conflict of interest question involving the Mori Point project in the City of Pacifica. I appreciate the expedited response as well as the informal telephone advice I have received from your staff. This has been very helpful to me.

May I ask that you clarify certain of my responsibilities and limitations in light of your Advice Letter. I am currently involved in a number of other issues and projects, some of which relate to Mori Point. I would like you to clarify whether I may participate in the following projects:

Open Space Task Force

I am a member of the City's Open Space Task Force. The City Council established this task force to inventory open space lands in the City of Pacifica and to identify techniques to conserve and preserve these lands. The Task Force will prioritize these open space lands in terms of their importance to the City and recommend preservation, acquisition, open space easements, or other techniques that could preserve important open space areas if development were to occur in those areas. The Task Force will also discuss a City of Pacifica trails system linking coastal bluffs and ridgelines.

One of the forty open space areas being studied is Mori Point. May I participate in decisions about the Open Space Task Force's recommendations for Mori Point? These could include suggested limitations on development, identification of areas for open space, and suggestions for acquisition by public agencies. The Open Space Task Force could recommend that Mori Point remain as open space and be part of a blufftop trails system running the length of Pacifica, or it could recommend that development be allowed subject to development standards and regulations.

Diane M. Griffiths
June 1, 1988
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The Open Space Task Force will have to decide which recommendations to make. These recommendations are advisory only, will have no present effect on the development potential of these lands, and will not change their zoning or General Plan designations. These recommendations will be presented to the Planning Commission and City Council. There is no current plan as to whether or how any recommendations would be implemented. The Open Space Task Force recommendations are to serve as a policy study to hopefully guide the City's decision-making process in the future in respect to the development of these lands.

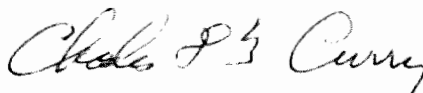
Expansion of the Golden Gate National Recreation Area (GGNRA)

The preservation of open space is a high policy priority of mine. Accordingly, I have been very active in the community in support of the efforts to preserve the City's open space. I am a member of our U. S. Congressman Tom Lantos' Advisory Committee. As such, I would like to work to expand the GGNRA boundaries so that the National Park Service can acquire additional parcels in the City of Pacifica. One of these parcels could be Mori Point. May I lobby public officials to expand the GGNRA to include Mori Point? May I solicit help from private foundations such as the Trust for Public Lands to assist the GGNRA in acquiring Mori Point? If the City of Pacifica were to be involved in discussions concerning acquiring Mori Point, could I participate in that decision-making process?

I believe that I should be able to participate in all of the above-listed decisions, since, if the land were to remain as open space, my property value would certainly be unchanged. However, in light of your letter, I would like further clarification. I would be glad to provide such further information as you require.

I would appreciate your response to these questions to guide my future activities in the City of Pacifica.

Very truly yours,



Charles D. B. Curry
Councilmember



California Fair Political Practices Commission

June 2, 1988

Honorable Charles D. B. Curry
Councilmember
City Hall
170 Santa Monica Avenue
Pacifica, CA 94044

Re: 88-207

Dear Mr. Curry:

Your letter requesting advice under the Political Reform Act was received on June 2, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh